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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/462,971 06/28/00 GARCIA DURAN

J AD6516

EXAMINER

IM52/0614

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LEGAL PATENTS  
WILMINGTON DE 19898

HOKE, V	
ART UNIT	PAPER NUMBER

1714

DATE MAILED:

06/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/462,971**

Applicant(s)  
**DURAN ET AL**

Examiner  
**VERONICA P. HOKE**

Art Unit  
**1714**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on May 14, 2001

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-6 is/are pending in the application

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-6 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,5 and 6 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Spelthann (US patent no. 5610234) , newly cited.

Filler and/ or fire retardant ( upto 50 wt. % of the entire composition) compounded ( paragraph bridging cols. 3 -4) tertiary resin comprised compositions are disclosed. The resins comprise:

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- 1) a poly ethylene resin inclusive of ethylene vinyl acetate monoxide terpolymer ( col.2, lines 60- col.3, line 5 and col.5, lines 14-15) at 3-50 wt. % ( col.3, lines 20-22);
- 2) a non- polar thermoplastic polyolefin excluding polar ethylene resins e.g. HDPE, LDPE, VLPE and LLDPE ( col.1, line 54- col.2, line 55) at 35 - 96 %; and
- 3) a compatibilizer for the two resins which is a carboxylic acid modified polyolefin such as maleic anhydride grafted polyethylene ( col.3, lines 28-54) at 1-30 % which increases the other two resins' flexibility ( col.4, lines 43-47).

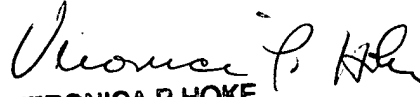
The latter resin would be expected to offset the rigidity engendered by the inorganic filler such as talc or the magnesium hydroxide or calcium carbonate fillers of the exemplary compositions.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spelthann et al ( 234) as applied to claims 1-3,5 and 6 above, and further in view of Opsahl et al, of record..

Opsahl ( col.3) resolves any doubt that many fillers such as magnesium hydroxide or aluminum trihydrate would serve the dual purpose of inhibiting burning in compositions which can comprise not only ethylene vinyl acetate carbon monoxide terpolymers but their admixtures with other olefinic resins such as a carboxylic acid -containing ethylene resin and/ or ethylene vinyl acetate resin and/ or an nonfunctionalized alpha olefin polymer such as polyethylene. See col.2, lines 29 through col. 3, line 7. Therefore cognizant of this duality , it would be obvious to utilize the inorganic compounds which Spelthann compounds into the same tertiary resin blend for the dual purposes of proving rigidity and burn resistance. Opsahl relates that for optimum flame proofing this inorganic filler/flame retardant should be present at from 60-80 weight percent. Increasing

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their quantity in Spelthann's composition in order to provide this optimum effect would be within the routineer's skill

  
VERONICA P. HOKE  
PRIMARY EXAMINER

vph

June 11, 2001

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